

Tim —

2/22/00

## Memorandum

**To:** Norm Young

**Thru:** Glen Saxton

**From:** Tim Luke

**Date:** February 21, 2000

**Re:** Request by Jim Speck/Dave Stoecklein for Headgates and Measuring Devices on Warm Springs Creek

I agree with your conclusions;  
However, A meeting to discuss  
the issue may be wise before  
issuing an order to install.  
Could a meeting be piggybacked  
onto the water dist. meeting?  
Nay

Norm,

You asked me to review the attached request by Jim Speck and address whether the request was consistent with the agreement/order issued in the contested case concerning the transfers from the Fish Hatchery Canal, a diversion off of Warm Springs Creek.

Speck requests that IDWR enforce its order of March 4, 1991 requiring headgates and measuring devices. Attached is a copy of that order. The order was specific only to certain users identified on an attached certificate of service. It does appear that the listed users are those with diversions above Mackay Reservoir, including both the Big Lost River and Warm Springs Creek. I do not believe that the service attachment was comprehensive to all users or diversions above the reservoir. Ownership of some rights in the area has changed, so some of the current owners may not be aware of the 1991 order.

Attached also are copies of the Fish Hatchery Canal Agreement and the IDWR Preliminary Order related to the canal transfers. Both the agreement and order are specific to the Hatchery Canal, not Warm Springs Creek. The agreement does have one reference to installation of measuring devices and headgates on the canal (see item 10). I believe this item is included for purpose of assisting the seepage study. Ofcourse, the whole contested matter does ultimately relate to distribution on Warm Springs Creek. Thus, Speck's request, when placed in context of his client's objectives as stated in his August 23, 1999 letter, does seem logical.

Based on my inventory of diversions last fall on Warm Springs Creek, I can attest that many of the diversions have either inadequate or no measuring devices and headgates, including those of Speck's client. Some of the diversions on the Big Lost River above Chilly Bridge are also lacking measuring devices. The Big Lost River rules provide exceptions for measuring device requirements on the river below Chilly Bridge.

I do not have a problem recommending measuring devices and headgates on certain diversions on Warm Springs Creek and the Big Lost River above Chilly Bridge. The timing seems appropriate because we are currently looking at including the area above Mackay Reservoir into the water rights accounting program. Furthermore, the diversions in this area have been lacking for some time with respect to measurement and recording by the water district. IDWR has rarely received daily log books or detailed accounting of individual diversions in this area. I have been working with the District on trying to include these diversions in the new computer database program that I set up for them last year. In short, we need to improve the actual measurement as well as the reporting or documentation of diversions in this area. I think the documentation will improve if more measuring devices are installed and/or better maintained.

My recommendation is to issue another order similar to the first and send it to those users who have the deficient measuring devices and headgates. I could respond to Speck and advise him that we intend to send orders to certain users who have documented deficiencies. Several of the pump diversions on Warm Springs Creek are problematic for measuring whether we use traditional devices or power records. A couple of the diversions above Chilly Bridge appear to have problems with unstable stream banks and wash outs, but all should be able to accommodate at least a measuring device some distance downstream of the main heading (Doug concurs with this view). As a result, we may want to provide for some flexibility in any order we issue, and provide time for installation after high season runoff.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF INSTALLATION)  
OF HEADGATES, CONTROLLING )  
WORKS AND MEASURING DEVICES )

ORDER

FINDINGS OF FACT

1. The rights to the use of water of the Big Lost River and tributaries have been determined in the case of Utah Construction Company v. John F. Abbott et. al. in the District Court of the United States in and for the District of Idaho, Eastern Division.
2. The Utah Construction v. Abbott decree required all waterusers to install and maintain suitable headgates, controlling works and measuring devices at their points of diversion.
3. The use of water in the Big Lost River drainage has been thoroughly investigated in the recent claims taking and field review activity of the Snake River Basin adjudication. A number of diversions were determined to either not have a measuring device or to have an inadequate measuring device.
4. Suitable headgates, controlling works and measuring devices are required to ensure proper delivery of water to those entitled to its use.

CONCLUSIONS OF LAW

1. The Director of the Department of Water Resources (Director) has supervisory authority over operation of water districts pursuant to Title 42, Chapter 6 of the Idaho Code.
2. Title 42, Chapter 7 of the Idaho Code requires appropriators to install and maintain measuring devices above reservoirs and in streams to measure flows and empowers the Director of the Department of Water Resources to order the installation of such measuring devices.
3. Suitable headgates, controlling works and measuring devices are required at points of diversion to allow the watermaster of Water District No. 34 to properly deliver water to those entitled to its use.
4. The Director should order the installation and maintenance of suitable headgates, controlling works and measuring devices.

ORDER

IT IS, THEREFORE, HEREBY ORDERED, that waterusers within the Big Lost River basin as shown on the attached Certificate of Service are required to install and maintain suitable headgates, controlling works and measuring devices as determined by the Director.

IT IS, FURTHER HEREBY ORDERED, that the installation required by this order be complete on or before the start of the 1991 irrigation season unless extended for good cause by the Director.

Dated this 4<sup>th</sup> day of March, 1991.

for *N. C. Young*  
NORMAN C. YOUNG  
Administrator

CERTIFICATE OF MAILING

I Certify that on this the 5th day of March, 1991, a true and correct copy of the Order for installation of measuring equipment in the Big Lost River, was sent certified mail to:

Herb Whitworth  
Star Route  
Mackay, ID 83251

San Felipe Ranches  
P. O. Box 388  
Mackay, ID 83251

Lani & Dan Mulick  
Star Route  
Mackay, ID 83251

Morgan Harlodsens Land  
& Livestock  
Star Route  
Mackay, ID 83251

Gary & Edith Larter  
Star Route  
Mackay, ID 83251

Lola L. Coates  
Star Route  
Mackay, ID 83251

Milt Butler  
Mackay, ID 83251

Clinton & Esther Bitton  
Star Route  
Mackay, ID 83251

Bret L. Zollinger  
Star Route  
Mackay, ID 83251

Richard A. Smith  
Patricia A. Smith  
Star Route  
Mackay, ID 83251

Bette Jean Kent  
Pernecy D. Kent  
Marcia Lee Kent  
P. O. Box 365  
Mackay, ID 83251

Victor & Scott Johnson  
Churn Dasher Ranch  
Star Route  
Mackay, ID 83251

Broken River Ranch  
c/o Robert C. Hadley  
Star Route  
Mackay, ID 83251

Gordon & Ina Mae Harris  
Star Route  
Mackay, ID 83251

Brian Barsotti  
P. O. Box 2133  
Ketchum, ID 83340

David Stoecklein  
Shelley Stoecklein  
Mary J. Stoecklein  
Walter Stoecklein  
P. O. Box 856  
Ketchum, ID 83340

Marcelle J. Bright  
Raymond E. Bright  
Star Route  
Mackay, ID 83251

Roxanne R. Hale  
Star Route  
Mackay, ID 83251

Castle Rock Owners Assn.  
c/o Mark Brown  
P. O. Box 5618  
Ketchum, ID 83340

Harry J. Crawford  
Route 1, Box 8  
Darlington, ID 83231